

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF FLORIDA
GAINESVILLE DIVISION

IN RE:

TRAVIS CLAYTON WILLIAMS &
CALLIE JETT WILLIAMS,

CASE NO.: 17-10190-KKS
CHAPTER: 7

Debtors.

SOUTHEASTERN FUNDING
PARTNERS, LLLP

ADV. NO. 18-01002-KKS

Plaintiff,

v.

TRAVIS CLAYTON WILLIAMS &
CALLIE JETT WILLIAMS,

Defendants.

**ORDER GRANTING DEFENDANTS' MOTION TO DISMISS
SECOND AMENDED COMPLAINT (DOC. 36)**

THIS MATTER came before the Court for hearing on November 7 and December 4, 2018 on *Defendants' Motion to Dismiss Second Amended Complaint and Memorandum of Law in Support*,¹ and *Plaintiff's Response to Defendants' Motion to Dismiss Second Amended Complaint and Memorandum of Law*.² Having reviewed the pleadings

¹ Collectively, the "Motion to Dismiss," Docs. 36 and 37.

² "Response," Doc. 40.

and relevant case law, and having heard argument of counsel, the Court finds that the Motion to Dismiss is due to be granted.

BACKGROUND

The initial deadline for parties to object to discharge and dischargeability was December 4, 2017.³ Ultimately, the Court extended that deadline for all parties through March 5, 2018, and specifically for Plaintiff, Southeastern Funding Partners, LLLP (“SFP”) through June 3, 2018.⁴ SFP commenced this adversary proceeding by filing a five-Count Complaint on April 3, 2018.⁵ Before the extended deadline for Defendants to file a response to the initial Complaint expired,⁶ and without leave of Court, Plaintiff attempted to add an additional plaintiff by filing an Amended Complaint on May 24, 2018.⁷ The Court dismissed that Amended Complaint.⁸

On July 20, 2018, Defendants filed their *Motion to Dismiss Plaintiff’s Original Complaint*.⁹ The Court granted that motion in part,

³ *In re Williams*, Case No. 17-10190-KKS, Doc. 2, *Official Form 309A- Notice of Chapter 7 Bankruptcy Case – No Proof of Claim Deadline* (Bankr. N.D. Fla).

⁴ *Id.* at Docs. 85, 113, 198 and 203.

⁵ Doc. 1.

⁶ The Court extended the deadline for Defendants to file a response to the initial Complaint until June 18, 2018. Doc. 6.

⁷ Doc. 8.

⁸ Doc. 14. In its order dismissing that Amended Complaint the Court extended Defendants’ time within which to file a response to Plaintiff’s initial Complaint to July 20, 2018.

⁹ Doc. 18.

finding that the original Complaint lacked specificity as to Defendant, Callie Jet Williams (“Ms. Williams”), and that as to Defendant, Travis Clayton Williams (“Mr. Williams”), it was based on improper shotgun pleading.¹⁰ On August 6, 2018, Plaintiff filed its *Second Amended Complaint* along with a *Motion for Leave to Amend and Memorandum of Law*.¹¹ The Court entered a separate order granting Plaintiff leave to amend, deeming the Second Amended Complaint timely filed and giving Defendants fourteen (14) days to file a response.¹² The instant Motion to Dismiss followed.

Defendants argue that the Second Amended Complaint fails to state a claim on which relief can be granted, in large part because Plaintiff repeats the same type of shotgun pleading the Court found improper when it dismissed the initial Complaint. Defendants correctly declare that such pleading makes it difficult to discern which facts belong to which counts.¹³

¹⁰ Doc. 32. In its Order, this Court stated: “As a preliminary matter, the factual allegations in Plaintiff’s Complaint are contained within numbered paragraphs 1-35. Rather than specify which allegations support each Count, Plaintiff “incorporated” paragraphs 1-35 into each count, without explanation as to which facts were material or germane to each count. This type of pleading is improper. The burden is on the Plaintiff, not the Court, to link the facts to each cause of action.” *Id.* at pp. 4-5.

¹¹ Docs. 26 and 27.

¹² Doc. 33.

¹³ Defendants also maintain that the Second Amended Complaint appears to be a continued effort to assert causes of action belonging to a third party, in contravention of

Plaintiff quarrels with the notion that its Second Amended Complaint is wrought with shotgun pleading. In fact, in its written response Plaintiff denied that this Court had previously ruled on this issue.¹⁴ Plaintiff defends its pleading style and insists that it included all facts in the initial section of the Second Amended Complaint to prevent duplication and for clarity. If clarity was truly Plaintiff's goal, the Second Amended Complaint falls far short.

Aside from the shotgun pleading issues, Defendants urge this Court to dismiss the Second Amended Complaint on the merits with prejudice as to Ms. Williams. According to Defendants, Plaintiff has still failed to allege any facts as to Ms. Williams with sufficient specificity to state a cause of action against her; especially with regard to the alter-ego claim.

In its responsive memorandum, Plaintiff sets forth which factual allegations it deems applicable to Ms. Williams. There, Plaintiff attempts to clarify its theory that Ms. Williams schemed with her husband to commit the wrongful acts complained of. Plaintiff urges

this Court's dismissal of the first Amended Complaint. Plaintiff counters that the facts relating to loans made by third parties are necessary background to its causes of action.

¹⁴ Doc. 40, p. 3. Plaintiff's counsel, Mr. Kirkconnell, conceded at the hearing on the Motion to Dismiss that the Court had, in fact, held that Plaintiff's first Amended Complaint contained unacceptable shotgun pleading.

that it should not have to plead fraud with the normal requisite of particularity, claiming it has been unable to discover some facts allegedly known only to Defendants because the Trustee has not yet completed Defendants' § 341 meeting in the administrative case.¹⁵

DISCUSSION

Motion to Dismiss Standard

In addressing a motion to dismiss, the Court must accept the factual allegations in a complaint as true, and take them in the light most favorable to the Plaintiff.¹⁶ To survive a motion to dismiss, a complaint must contain “a short and plain statement of the claim showing that the pleader is entitled to relief.”¹⁷ This standard “requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.”¹⁸ “Legal conclusions without adequate factual support are entitled to no assumption of truth.”¹⁹ Further “[t]hreadbare recitals of the elements of a cause of action,

¹⁵ Defendants filed their Chapter 7 petition on August 8, 2017. The initial § 341 meeting was held on October 4, 2017 and has been continued numerous times, apparently due to Defendants' failure or inability to produce information requested by the Chapter 7 Trustee. *In re Williams*, Case No. 17-10190-KKS, Docs. 67, 101, 115, 125, 140, 170, 202, 210, 224, 229, 242, 257 and 263 (Bankr. N.D. Fla).

¹⁶ *Erickson v. Pardus*, 551 U.S. 89 (2007).

¹⁷ Fed. R. Civ. P. 8(a)(2), made applicable by Fed. R. Bankr. P. 7008.

¹⁸ *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (citation omitted).

¹⁹ *Mamani v. Berzain*, 654 F.3d 1148, 1153 (11th Cir. 2011) (citations omitted).

supported by mere conclusory statements, do not suffice.”²⁰ Thus, the Court engages in a two-step approach: “When there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief.”²¹

First and foremost, the allegations in the Second Amended Complaint are neither short nor plain. Especially as to Ms. Williams, the Second Amended Complaint suffers from the same deficient pleading as did the prior Complaint, about which this Court stated:

In short, Plaintiff’s “shotgun” pleading and lack of facts specific to Ms. Williams in the Complaint make it impossible to discern whether Plaintiff has facts sufficient to support the causes of action alleged against Ms. Williams in Counts I through V. For these reasons, the Motion is due to be granted as to Ms. Williams on all Counts.²²

If pled properly, it appears Plaintiff may have enough facts to give rise to causes of action in each Count as to Mr. Williams. But taking all facts alleged against Ms. Williams as true, and overlooking the shotgun pleading as to her, Plaintiff fails to assert facts sufficient to state a cause of action against Ms. Williams in Counts I, II, III and V.

²⁰ *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

²¹ *Iqbal*, 556 U.S. at 679.

²² Doc. 32, p. 6.

Plaintiff's Improper Shotgun Pleading

Shotgun pleadings are those from which “it is virtually impossible to know which allegations of fact are intended to support which claim(s) for relief.”²³ A typical example of a shotgun pleading is one where a complaint contains “several counts, each one incorporating by reference the allegations of its predecessors, leading to a situation where most of the counts . . . contain irrelevant factual allegations and legal conclusions.”²⁴

The Eleventh Circuit has recently reiterated the impropriety of shotgun pleadings. In *Vibe Micro, Inc. v. Shabanets*, the plaintiff filed a second amended complaint after the district court dismissed the first amended complaint because of shotgun pleading.²⁵ As in the instant action, the allegations “were ‘oftentimes not connected to a particular Defendant or set of Defendants, making it impossible to understand who did what.’”²⁶ Before dismissing the second amended complaint with prejudice under Rule 8 of the Federal Rules of Civil Procedure,

²³ *Anderson v. District Bd. Of Trustees of Cent. Florida Community College*, 77 F.3d 364, 366 (11th Cir. 1996).

²⁴ *Dimieri v. Medicis Pharmaceuticals Corp.*, No. 2:14-CV-176-FTM-38, 2014 WL 6673156 at *2 (M.D. Fla. Nov. 24, 2014).

²⁵ *Vibe Micro, Inc. v. Shabanets*, 878 F. 3d 1291, 1293 (11th Cir. 2018).

²⁶ *Id.* at 1294.

the district court entered an order that provided plaintiff “a thorough set of directions on how to remedy” its pleading errors.²⁷ The plaintiff appealed the dismissal with prejudice, maintaining that a trial court can never dismiss a pleading on Rule 8 shotgun pleading grounds unless it finds evidence of bad faith.²⁸ The Eleventh Circuit disagreed and affirmed the dismissal of plaintiff’s second amended complaint with prejudice.²⁹

Plaintiff SFP has had two bites at the pleading apple. But, unlike the district court in *Vibe Micro*, this Court has not, until now, supplied Plaintiff with “a veritable instruction manual” on how to remedy its shotgun pleading issues.³⁰ For that reason, it is premature to dismiss the Second Amended Complaint with prejudice solely on shotgun pleading grounds. By addressing the deficiencies in each Count of the Second Amended Complaint, the Court provides Plaintiff one more chance to properly plead causes of action, other than those being dismissed with prejudice as to Ms. Williams.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.* One distinction between *Vibe Micro* and the instant action is that the plaintiff in *Vibe Micro* did not request leave to amend its complaint; here, Plaintiff SFP requested and received leave to amend. *Vibe Micro, Inc. v. Shabanets*, 878 F. 3d at 1294; *See Docs. 26 and 33.*

³⁰ *Vibe Micro, Inc. v. Shabanets*, 878 F. 3d at 1296.

Count I – Alter-Ego

In Count I of the Second Amended Complaint, Plaintiff seeks a declaratory judgment that 1) both Defendants are the alter-egos of two entities, Innovative Home Builders of North Florida, Inc. (“Innovative”) and IHB Holdings, LLC (collectively, “IHB Entities”), and “vice versa;” 2) the corporate veil should be pierced between both Defendants and the IHB Entities; and 3) both Defendants are liable for the IHB Entities’ debt to Plaintiff based on these alter-ego theories.

To make a finding of alter-ego and pierce the corporate veil in Florida:

“Plaintiffs have the heavy burden to prove by a preponderance of the evidence that: 1) the shareholder dominated and controlled the corporation to such an extent that the corporation’s independent existence was in fact non-existent and the shareholder was in fact the alter-ego of the corporation; 2) the corporate form must have been used fraudulently or for an improper purpose; and 3) the fraudulent or improper use of the corporate form caused injury to the claimant.”³¹

Plaintiff begins Count I by realleging paragraphs 1 through 33.³²

Plaintiff then sets forth details of loans Plaintiff or its predecessor(s)

³¹ *In re Cannon*, Case No. 12-10462-KKS, 2017 WL 3491804 at *3 (Bankr. N.D. Fla. Jun. 6, 2017).

³² Some of these paragraphs contain facts; others merely recite jurisdiction and venue, the date Defendants filed bankruptcy, and where Defendants reside.

made to the IHB Entities.³³ None of the allegations in Count I clarify which facts support Plaintiff's alter-ego claim against either Defendant. Further, the facts Plaintiff alleges as to Ms. Williams negate any possible alter-ego ruling. Plaintiff does not claim Ms. Williams was an officer of or had any position of power or control over the IHB Entities. Rather, Plaintiff alleges that Ms. Williams was an employee of and received compensation from one of the IHB Entities.³⁴ The Second Amended Complaint contains no allegation of fact connecting Ms. Williams with IHB Holdings, LLC, the other IHB Entity, in any way.

In paragraph 36 of Count I, Plaintiff conclusively alleges that "based upon the conduct described herein, [both] Defendants and the IHB Entities are alter-egos and/or mere instrumentalities of one another." But the only "conduct" that Plaintiff describes before paragraph 36 as to Ms. Williams was that she signed a personal guaranty of loans made to Innovative or IHB Holdings, LLC.

Beginning in paragraph 37 of Count I, Plaintiff describes transactions that apparently resulted in it not receiving mortgages on

³³ Doc. 27, ¶¶ 21-33.

³⁴ *Id.* at ¶ 8.

properties owned by Innovative. Here, Plaintiff asserts that both Defendants knew what properties were owned by the IHB Entities, and that Mr. Williams falsely and deliberately misrepresented that IHB Holdings, LLC owned all the properties. As to Ms. Williams, Plaintiff alleges only that she “failed to object,” “ratified” her husband’s misrepresentations, and “personally benefitted from” the loan from which a certain parcel of real estate was omitted.³⁵ Nowhere in Count I does Plaintiff explain what Ms. Williams failed to object to, what she ratified, or how a party that may have benefitted from another party’s representations becomes the alter-ego of a corporate entity. Similarly, Plaintiff fails to explain how a party that failed to object to another’s representations becomes the alter-ego of a corporate entity over which that party had no authority or control.

In paragraph 51 of Count I Plaintiff begins its discussion of what it characterizes as “the Defendants generally” using IHB Holdings, LLC and the money it borrowed from Plaintiff for their own improper purposes. Plaintiff describes the so-called improper purposes as financing “significant gambling losses” and “unknown, unrelated and

³⁵ *Id.* at ¶46.

unexplained purposes.”³⁶ Here again, Plaintiff alleges nothing specific as to Ms. Williams. Plaintiff asserts that only Mr. Williams made affirmative representations. Although Plaintiff claims in one part that both Defendants “used the money to gamble,”³⁷ in other places Plaintiff alleges that only Mr. Williams used IHB Entities’ money to gamble. Even though Plaintiff never alleges that Ms. Williams gambled, Plaintiff proclaims that “both Defendants” lost specific amounts gambling.³⁸

Plaintiff continues this contradictory pleading by claiming that both Defendants should be held to be alter egos of the IHB Entities because Plaintiff relied upon “[Mr. Williams’] misrepresentations that *he* would use the loan proceeds to build houses.”³⁹ Plaintiff then repeats its claims that both Defendants used the assets of the IHB Entities for their own personal benefit, “including by gambling.” Plaintiff concludes by claiming that based on these “facts,” both Defendants

³⁶ *Id.* at ¶ 51.

³⁷ *Id.* at ¶ 54.

³⁸ *Id.* at ¶¶ 61-66. In support of its allegations that both Defendants lost money gambling, Plaintiff attached a copy of documents entitled “Tax Information Statements” solely naming Mr. Williams. (Doc. 27, Ex. Z.)

³⁹ *Id.* at ¶ 67 (emphasis added).

dominated and controlled the IHB Entities to such an extent that they are alter-egos of one another.⁴⁰

Even assuming, arguendo, that Ms. Williams gambled, that she knew of her husband's gambling, and that she benefitted from money loaned to the IHB Entities, it is impossible to conclude that such facts could render Ms. Williams the alter-ego of the IHB Entities under Florida law. Count I is due to be dismissed with prejudice as to Ms. Williams. As to Mr. Williams, Count I is based on shotgun pleading that must be corrected in any further amended Complaint.

Count II – Damages Arising from Fraudulent Conduct

Count II comprises only two numbered paragraphs, the first of which “re-alleges” paragraphs 1 through 71. The second alleges that Plaintiff has suffered damage as a result of Mr. Williams’ fraudulent conduct.⁴¹ Plaintiff then requests damages against both Defendants. Neither Count II nor the preceding paragraphs contain facts describing “fraudulent conduct” by Mr. Williams, let alone facts that would give rise to a cause of action against Ms. Williams arising from “fraudulent conduct.” For that reason, Count II is to be dismissed, with prejudice,

⁴⁰ *Id.* at ¶¶ 67-71.

⁴¹ *Id.* at ¶ 79.

as to Ms. Williams. As to Mr. Williams, Count II is the epitome of shotgun pleading and shall be dismissed for that reason, with leave to amend.

Count III – Objection to Discharge – 11 U.S.C. § 727(a)(4)(A)

Count III is not without its own problems. Although the title of that Count reflects a cause of action under Bankruptcy Code Section 727(a)(4)(A), in paragraph 81 Plaintiff asserts that it is proceeding under 11 U.S.C. § 727(A)(5). Assuming Plaintiff truly intended to assert a cause of action under Section 727(a)(4)(A) of the Code in Count III, its pleading again falls short.

Under Section 727(a)(4)(A), a debtor’s discharge may be denied if the debtor “knowingly and fraudulently, in or in connection with the case—made a false oath or account.”⁴² The only facts Plaintiff alleges here are that both Defendants lied about “their” gambling losses, even though Plaintiff still makes no claim that Ms. Williams gambled. Plaintiff’s only allegations about Ms. Williams in Count III are that she “knew about” her husband’s allegedly fraudulent conduct and false statements; knew when he began gambling; knew how much he

⁴² 11 U.S.C. § 727(a)(4)(A)(2018).

claimed to have won or lost; was paid by an IHB Entity; knew how many employees Innovative had; knew that the IHB Entities had borrowed money from Plaintiff; knew the terms of those obligations; knew details about construction problems; knew how many houses were built; and knew about the IHB Entities' business losses.⁴³ Nowhere does Plaintiff allege how Ms. Williams' supposed knowledge, assuming it all to be true, equates to her knowingly and fraudulently making a false oath or account in or in connection with her bankruptcy case.

The only other allegations about Ms. Williams in Count III are contained within paragraphs 87 and 88. There, Plaintiff avers that Ms. Williams testified falsely under oath at a Rule 2004 examination that her husband did not lose any money gambling. Plaintiff then, with no explanation, concludes that this testimony is "material to the bankruptcy case" because it "involved money lent by creditors of the Estate. . ."⁴⁴ Aside from being a mere conclusion, this statement ignores the obvious—that most debtors' testimony concerns money loaned before they filed bankruptcy—and provides no guidance as to

⁴³ Doc. 27, ¶¶ 83-84.

⁴⁴ *Id.* at ¶ 88. Plaintiff did not attach a transcript of any such testimony by Ms. Williams.

why Ms. Williams' testimony on this subject was in any way material to her bankruptcy case. Count III is due to be dismissed as to Ms. Williams, with prejudice. As to Mr. Williams, Count III is also based on shotgun pleading that must be corrected in any amended complaint.

Count IV – Objection to Discharge – 11 U.S.C. § 727(a)(5)

In Count IV, Plaintiff objects to both Defendants' discharges under 11 U.S.C. § 727(a)(5), alleging that Defendants have failed to "satisfactorily explain the loss and dissipation of their assets. . ." ⁴⁵ In this Count Plaintiff realleges paragraphs 1 through 71, most of which have nothing to do with § 727(a)(5), and paragraphs 81 through 88 that pertain to the supposed "false oath or account" that is the subject of Count III. ⁴⁶

Count IV is silent as to what assets may have belonged to one or both Defendants. It is equally silent as to what of Defendants' assets have been lost or dissipated. It is entirely unclear what bearing the alter-ego related allegations have on a claim under Section 727(a)(5). Count IV is also based on shotgun pleading. For those reasons, Count IV is due to be dismissed with leave to amend as to both Defendants.

⁴⁵ *Id.* at ¶ 91.

⁴⁶ *Id.* at ¶ 89.

Count V – Objection to Dischargeability – 11 U.S.C. § 523(a)(2)(A)

In Count V, Plaintiff claims that the debt of both Defendants should not be discharged because both Defendants “and the IHB Entities” obtained money “through false pretenses, a false representation, and/or actual fraud”⁴⁷ Here, Plaintiff realleges paragraphs 1 through 71, 81 through 88, and 90 through 94. Plaintiff then summarily declares that the debt of both Defendants is nondischargeable.⁴⁸ Count V includes no facts regarding what false pretenses or false representations either Defendant made, when same were made or by whom. Count V does not articulate what actual fraud was allegedly perpetrated by either Defendant. It is impossible to tell what, if any, money Defendants allegedly obtained from Plaintiff as a result of fraud; especially because the only money mentioned in the Second Amended Complaint was loaned to non-debtor corporate entities.

Assuming all facts alleged in Count V to be true, the representations on which Plaintiff relies in this Count are those made

⁴⁷ 11 U.S.C. § 523(a)(2)(18): “A discharge . . . does not discharge an individual debtor from any debt . . . (2) for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by – (A) false pretenses, a false misrepresentation, or actual fraud other than a statement respecting the debtor’s or an insider’s financial condition.”

⁴⁸ Doc. 27, ¶¶ 95-97.

solely by Mr. Williams. Plaintiff sets forth not a single fact relating to representations made or money obtained by Ms. Williams. Plaintiff does not allege a single fact in Count V that would support a cause of action against Ms. Williams for obtaining money through false pretenses, false misrepresentation, or actual fraud. Count V is also based on impermissible shotgun pleading that must be corrected. For these reasons, Count V is to be dismissed with prejudice as to Ms. Williams and with leave to amend as to Mr. Williams.

CONCLUSION

Plaintiff has failed to meet its burden of pleading clearly, and in such a way that the Court and Defendants do not have to dissect the Second Amended Complaint to discern what facts go with which Count.

For the reasons stated, it is

ORDERED:

1. Defendants' *Motion to Dismiss Second Amended Complaint*

(Doc. 36) is GRANTED:

- a. As to Defendant, Callie Jett Williams, Counts I, II, III, and V are dismissed with prejudice; Count IV is dismissed without prejudice.

- b. As to Defendant, Travis Clayton Williams, all Counts are dismissed without prejudice.
2. Plaintiff has twenty-one (21) days from the entry of this Order to file a further amended complaint.
3. Failure to correct the deficiencies in the pleading may result in the dismissal of this adversary proceeding with prejudice as to both Defendants.

DONE AND ORDERED on December 17, 2018.



KAREN K. SPECIE
Chief U. S. Bankruptcy Judge

Defendants' attorney is directed to serve a copy of this Order on interested parties and to file a Proof of Service within three (3) days of entry of this Order.